

REMARKS

Claims 1-7, 9 and 11-32 are currently pending in this application. Claims 1-7, 9 and 11-15 are under examination. To expedite the prosecution of the application, and as suggested by the Examiner, claim 1 has been amended and has been limited to RIAA and methylxanthine. Applicants reserve the right to pursue the original claims in one or more related application. Support for this amendment can be found in the specification in, for example, Table 7 on page 48. Accordingly, dependent claims 2, 4, 6 and 11-13 have been amended for consistency. Claims 3, 5 and previously withdrawn claims 16-32 have been cancelled without prejudice. Applicants reserve the right to pursue these claims in one or more related applications. Applicants respectfully request entry of the claims as amended and examination of the application in light of the following remarks.

DOUBLE PATENTING REJECTION

Claims 1-7, 9 and 11-15 are provisionally rejected under the doctrine of obviousness-type double patenting in view of the claims 1-15 of U.S. Application Serial No. 11/590,424. Applicants have provided a terminal disclaimer in compliance with 37 CFR 1.321(c) joining the instant case to that of U.S. Application Serial No. 11/590,424. As such, withdrawal of this rejection is respectfully requested.

CLAIM REJECTIONS UNDER 35 USC § 103

Claims 1-7, 9 and 11-15 stand rejected under 35 USC § 103 (a) as being unpatentable over Ramirez (U.S. 2002/0102345) in view of Chappel et al. (Food and Chemical Toxicology, 1998, vol. 36, pp.915-922).

The Examiner contends that Ramirez teaches a beverage composition comprising beer and caffeine (a methylxanthine). The Examiner acknowledges that Ramirez does not teach tetra-hydroisoalpha acid, but contends that Chappel et al. teach the addition of tetrahydroisohumulone to beer to provide bitterness and stability. The Examiner concludes that one skilled in the art would have combined the two references to arrive at the composition claimed because he or she “would be motivated to add a more stable and

efficient bittering agent in order to overcome the problem of the beer not having a true taste of the bitterness in beer.” See Office Action, page 7, first paragraph.

On page 9 of the Office Action, “The Examiner suggests amending the claims to the ratios with the specific compounds presented in Tables 5 and 7 that demonstrate synergy.” See Office Action, page 9, bottom of the page.

Applicants respectfully traverse the rejection for the reasons of record. However, solely to expedite the prosecution of this application, and without acquiescing to the reasoning offered in the Office Action, Applicants have amended the claims as suggested by the Examiner. As such, it is respectfully submitted that the amendment to the claims render this ground of rejection moot. Applicants respectfully request withdrawal of this rejection.

CONCLUSION

In light of the amendments and remarks herein, Applicants submit that the claims are in condition for allowance and respectfully request a notice to this effect. If there are any questions regarding these remarks, the Office is invited to contact the undersigned agent at the telephone number provided below.

To the extent necessary, a petition for a three (3) month extension of time under 37 C.F.R. 1.136 up to January 22, 2010, is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to deposit account 50-1133 and please credit any excess fees to such deposit account.

The Commissioner for Patents is authorized to charge any fee required under 37 C.F.R. 1.20(d), for the terminal disclaimer filed herewith, to deposit account 50-1133.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Atabak R. Royae, Reg. No. 59,037

McDERMOTT WILL & EMERY LLP

28 State Street

Boston, Massachusetts 02109

Telephone: (617) 535-4108

Facsimile: (617) 535-3800

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